

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MAPLEBEAR INC. DBA INSTACART,

Plaintiff,

v.

CORNERSHOP TECHNOLOGIES, INC., et
al.,

Defendants.

CASE NO. C20-1849RSM

ORDER DENYING MOTION TO QUASH

This matter comes before the Court on nonparty DataWeave, Inc.’s Motion to Quash. Dkt. #1. DataWeave, located in this District, moves to quash Plaintiff Maplebear Inc. d/b/a Instacart (“Instacart”)’s Second Amended Subpoena to Testify at a Deposition in a Civil Action, associated with the case *Maplebear Inc. dba Instacart v. Cornershop Technologies, Inc., et al.* (the “Texas Suit”),¹ and moves for sanctions under Rule 45.

Instacart alleges in the Texas Suit that Cornershop Technologies, Inc., accessed Instacart’s platform in violation of its Terms of Service and copied, without authorization, “thousands of copyrighted and licensed images, along with product descriptions, pricing data, and other information.” Dkt. #3-8, ¶ 2. The Complaint does not mention DataWeave by name.

DataWeave calls itself “a digital commerce analytics Software as a Service provider.” Dkt. #2 (“Bethadapura Dec.”), ¶ 2. Cornershop contracted with DataWeave to gather data from

¹ Filed in the United States District Court for the Eastern District of Texas, Case No. 2:20-cv-240-JRG.

1 Instacart’s websites, including product prices, stock info, and thumbnail URLs. *Id.* at ¶ 17.
2 Cornershop provided the Instacart accounts DataWeave used to gather the data. *Id.* at ¶ 18.
3 DataWeave sent the info it gathered to Cornershop in comma-separated value (“CSV”) files. *Id.*
4 at ¶¶ 19-23. DataWeave maintains that it never gathered actual image files. *Id.* at ¶ 20. While
5 DataWeave is located in this District, all services for Cornershop were performed by an affiliate
6 in India. *Id.* at ¶ 13.

7
8 Instacart asserts claims against Cornershop under the Computer Fraud and Abuse Act, 18
9 U.S.C. § 1030(g) (“CFAA”), the Texas Harmful Access by a Computer Act, Tex. Penal Code §
10 33.02 (“THACA”), breach of contract, the Copyright Act, 17 U.S.C. § 501, the Digital
11 Millennium Copyright Act, 17 U.S.C. §§ 1202(b)(1)-(3) (“DMCA”), common law unfair
12 competition, and civil conspiracy. (Rhoads-Weaver Dkt. #3-8 at ¶¶ 183-277. Counts one through
13 three allege that Cornershop violated the Instacart Terms of Service and exceeded Instacart
14 account authorization to access and use data on Instacart’s platform. *Id.* Other claims allege the
15 unauthorized copying and use of copyrighted images. *Id.*

16
17 Instacart has struggled to get information in discovery directly from Cornershop about
18 Dataweave’s services. In a letter dated December 3, 2020, Cornershop claimed that it “does not
19 control DataWeave’s specific scraping activities, Cornershop lacks information regarding which
20 specific accounts (if any) DataWeave actually used [to scrape Instacart],” and “Cornershop’s
21 policy during [the relevant] timeframe was not to retain DataWeave’s deliverables containing
22 data sourced from U.S. retailers after receiving and processing them.” Dkt #18 at 25. Cornershop
23 has stated that it “did not retain the .csv files received from DataWeave and “understands that
24 DataWeave will be producing the .csv files that it delivered to Cornershop” in response to a third-
25 party subpoena. *Id.* at 3.

On October 14, 2020, Instacart served its first subpoena on DataWeave seeking this kind of information. Dkt. #3-1. After resolving issues related to the location of compliance and timing, Instacart served a second subpoena on November 10, with a compliance date of December 4. Dkt #3-5.

On November 12, 2020, DataWeave and Instacart participated in a meet and confer. Dkt. #18, ¶ 10. The parties disagreed on the scope of the subpoena, especially the need of a 30(b)(6) witness from DataWeave.

On November 17, 2020, Instacart sent DataWeave a proposal narrowing its requests for documents and testimony. Dkt. #18 at 30–34. Instacart has now argued in briefing that it is only pursuing this narrowed list of topics:

- The data and information DataWeave scraped from Instacart for the benefit of Cornershop, including any editing or manipulation of that data [RFPs & Deposition Topics 1, 9]
- The full list of accounts DataWeave used to scrape Instacart and the persons who conducted the scraping of Instacart on DataWeave’s behalf, including any subcontractors [RFPs & Deposition Topics 1, 3, 7]
- The IP addresses from which the scraping was conducted [RFP & Deposition Topic 5]
- DataWeave’s method of scraping Instacart and the programs it used [RFP & Deposition Topic 6]
- The cessation of DataWeave’s services to Cornershop, and any efforts by DataWeave to remediate Instacart’s information from its systems [RFP & Deposition Topic 13]
- The total amount of compensation DataWeave received from Cornershop [RFP & Deposition Topic 11]
- DataWeave’s communications with Cornershop related to scraping and Instacart [Deposition Topic 10]
- Testimony regarding the identity, location, maintenance, destruction, and storage of documents responsive to the above-referenced RFPs [Deposition Topic 17]

Dkt. #17 at 5; *see also* Dkt. #4 (Motion to Compel). Deposition topics/RFP’s not listed above have been abandoned by Instacart.

1 Federal Rule of Civil Procedure 26 sets the broad scope of permissible discovery: Unless
2 otherwise limited by court order, the scope of discovery is as follows:

3 Parties may obtain discovery regarding any nonprivileged matter
4 that is relevant to any party's claim or defense and proportional to
5 the needs of the case, considering the importance of the issues at
6 stake in the action, the amount in controversy, the parties' relative
7 access to relevant information, the parties' resources, the importance
8 of the discovery in resolving the issues, and whether the burden or
9 expense of the proposed discovery outweighs its likely benefit.
10 Information within this scope of discovery need not be admissible
11 in evidence to be discoverable.

12 Fed. R. Civ. P. 26(b)(1). This standard applies to third-party subpoenas. Under Rule 45(d)(3)(A),
13 the Court must quash or modify a subpoena that requires disclosure of privileged or other
14 protected matter or subjects a person to undue burden. The Court may limit the extent of
15 discovery if the discovery sought “can be obtained from some other source that is more
16 convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i). The party who
17 moves to quash a subpoena has the burden of persuasion. *See Moon v. SCP Pool Corp.*, 232
18 F.R.D. 633, 637 (C.D. Cal. 2005).

19 Dataweave argues that Instacart is seeking “information at a Rule 30(b)(6) deposition that
20 is: irrelevant or otherwise outside the scope of discoverable information, already in Instacart’s
21 possession, in the possession or control of Cornershop... or that could be obtained through
22 documentary evidence which DataWeave has offered to produce if Instacart cannot obtain such
23 evidence from Cornershop through the ordinary course of discovery.” Dkt. # 1 at 5.

24 Instacart responds that it has already attempted to pursue the discovery at issue from
25 Cornershop, to no avail. Dkt. #17 at 7. The Court generally agrees with this assessment of this
26 situation, and finds that this does not serve as a basis to limit the remaining discovery sought
27 given the broad scope of permissible discovery under Rule 26.

1 Some of the information originally sought by Instacart was irrelevant and an undue
2 burden, including Topics 15 and 16. However, as that information is no longer being pursued,
3 the Court finds it need not modify the subpoena and trusts that it will not be a point of further
4 motions practice from these parties. The remaining information sought is relevant and
5 proportional to the needs of the litigation because the Court is convinced that DataWeave's
6 information, solely in their possession, is critical to the underlying claims in this case. This is
7 true whether or not DataWeave is able to demonstrate that it never "scraped" copyrighted image
8 files. A 30(b)(6) deposition is not an undue burden given DataWeave's contractual role in the
9 underlying events, nor has DataWeave shown that it would be duplicative given Cornershop's
10 refusal to supply information. DataWeave has failed to demonstrate undue burden or some other
11 basis to quash this now-modified subpoena. Sanctions against Instacart are not warranted.
12

13 Accordingly, having reviewed the Motion, along with the remainder of the record, the
14 Court hereby finds and ORDERS that nonparty Dataweave, Inc.'s Motion to Quash, Dkt. #1, is
15 DENIED. Having denied this Motion, the Court finds Instacart's Motion to Compel, Dkt. #4,
16 moot and it too is DENIED. Because the Motion to Compel is moot, the Court did not need to
17 rely on the Sealed Reply brief to that Motion, therefore the Motion to Seal, Dkt. #22, is DENIED
18 as moot. Dkts. #25 and #26 are to remain sealed on the docket. Having resolved all issues, this
19 case is CLOSED.
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21 DATED this 7th day of April, 2021.
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23

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25 RICARDO S. MARTINEZ
26 CHIEF UNITED STATES DISTRICT JUDGE
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